

RIGHTS DISPUTE

Entirely Avoidable

GIVEN THE AMOUNT OF REPUTATIONAL DAMAGE DONE to South Africa as a result of the Sishen mineral rights dispute, Judge **Raymond Zondo's** assessment that the "matter could have been handled better by all parties involved" was arguably the understatement of 2011.

In his 56-page judgement, released in December, the North Gauteng High Court Justice acknowledged that the case was "complex". However, he also argued that it arose primarily as a result of a failure by Kumba's Sishen Iron Ore Company (SIOC) and ArcelorMittal South Africa (Mittal) to speak to each other about the lodging of the old-order mining right. He was equally critical of the failure by the Department of Mineral Resources (DMR) to consult Mittal before it decided to grant SIOC sole and exclusive mining right at the Sishen properties.

He did not say as much, but Zondo hints at the fact that the whole ugly affair was entirely avoidable. He also refrains from commenting on the reasons for the lack of communication. But there is a definite sense that the dispute is underpinned by nothing less than old-fashioned human greed. In fact, the judge describes it as "very strange" and that, in disputing that it now holds the full mining right, SIOC "seems to have no quarrel in keeping to itself all the benefits or proceeds". "If Sishen does not believe it now holds a 100% right . . . I wonder how it explains the fact that all the proceeds of the iron-ore that it mines now come to it and it does not share them with anybody."

Kumba certainly knew that the 2001 Iscor unbundling agreement had been specifically designed to save the South African steel industry from likely closure by ensuring that the new steel entity remained vertically integrated. Nevertheless, it pressed ahead with a course of action designed to unpick the arrangement with scant regard for the deindustrialisation consequences.

But Mittal, too, needs to take a long hard look in the mirror, because it was its arrogant refusal to pass on any of the benefits from the arrangement to South African steel customers that created the conditions that emboldened Kumba to act in the manner it did. That intransigence has been demonstrated over and over again, including at a high-profile Competition Tribunal hearing into excessive pricing. It has endured through successive Trade and Industry Ministers, from **Alec Erwin** (who made several unsuccessful attempts to force a so-called 'developmental' price) to **Mandisi Mphahlela** and the incumbent, Dr **Rob Davies**, who, together with Economic Development Minister **Ebrahim Patel**, remains deeply unhappy with the way steel is priced in the domestic market.

These circumstances combined to create the conditions for a very damaging dispute, which was made worse by what, at best, could be described as government incompetence – at worst, pure corruption.

Critically, Zondo's clear thinking has gone some way to dealing with the more sordid aspects of the case without actually delving into them.

By showing that the DMR was, in fact, never in a position to award prospecting rights to the politically connected Imperial Crown Trading 289 (ICT), he may have helped to begin closing the chapter on an incident that raised far too many questions about the state of governance in South Africa – an incident aggravated by the fact that the individuals involved have strong associations not only with the African National Congress, but also with President **Jacob Zuma** and his deputy, **Kgalema Motlanthe**.

Although ICT has indicated its intention to appeal, the fact that the ruling is so firm on the status of the rights, backed by strong legal argument, goes some way to reassuring citizens and investors that the rule of law, for the time being at least, prevails.



A handwritten signature in black ink, appearing to read 'Raymond Zondo'.